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7 Attorneys for Defendants  
ALTA BATES SUMMIT MEDICAL CENTER,  
8 RUSSELL D. STANTEN, M.D., LEIGH I.G.  
IVERSON, M.D., STEVEN A. STANTEN, M.D., and  
9 WILLIAM M. ISENBERG, M.D., Ph.D.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 COYNESS L. ENNIX, JR., M.D., as an  
individual and in his representative capacity  
14 under Business & Professions Code Section  
17200 et seq.,

15 Plaintiff,

16 v.

17 RUSSELL D. STANTEN, M.D., LEIGH I.G.  
18 IVERSON, M.D., STEVEN A. STANTEN,  
M.D., WILLIAM M. ISENBERG, M.D.,  
19 Ph.D., ALTA BATES SUMMIT MEDICAL  
CENTER and does 1 through 100,

20 Defendants.  
21

CASE NO. C 07-2486 WHA

**DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE**

**DATE:** July 5, 2007  
**TIME:** 8:00 a.m.  
**DEPT:** Ctrm. 9, 19th Flr.  
**JUDGE:** Hon. William H. Alsup

**COMPLAINT FILED:** May 9, 2007  
**TRIAL DATE:** No date set.

22 Defendants Alta Bates Summit Medical Center; Russell D. Stanten, M.D.;  
23 Leigh I.G. Iverson, M.D.; Steven A. Stanten, M.D.; and William M. Isenberg, M.D., Ph.D.  
24 hereby request that the Court take judicial notice of the following documents pursuant to  
25 Federal Rule of Evidence 201:

26 **Exhibit A:** The Verified Complaint that was filed by Plaintiff Coyness L.  
27 Ennix, Jr., M.D., in the Superior Court for Alameda County on April 3, 2007 (Case No.  
28 RG 0718658) (the "State Court Action"). See *Hott v. City of San Jose*, 92 F. Supp. 2d

1 996, 998 (N.D. Cal. 2000) ("Pursuant to Federal Rule of Evidence 201, the Court may  
2 take judicial notice of papers filed in other courts.").

3 **Exhibit B:** The Notice of Entry of Dismissal (without prejudice) of the  
4 State Court Action which was executed on May 11, 2007. *See Hott*, 92 F. Supp. 2d at  
5 998.

6 **Exhibit C:** The Complaint in this action is attached for the Court's  
7 convenience as Exhibit C hereto.

8 Defendants also request, pursuant to Federal Rule of Evidence 201, that  
9 the Court take judicial notice of the February 2003 Summit Medical Staff of Alta Bates  
10 Summit Medical Center Bylaws cover page, the table of contents, Article II ("Purposes  
11 and Responsibilities"), Section 3.4 ("Basic Responsibilities of Medical Staff  
12 Membership"), Article VII ("Corrective Action"), Article VIII ("Interviews, Hearings and  
13 Appellate Reviews"), Article IX ("Officers"), Article X ("Clinical Departments and  
14 Services"), Article XI ("Committees"), and Article XIII ("Records and Proceedings of the  
15 Medical Staff"), as well as true and correct copies of the above sections adopted  
16 effective June 2005 and June 2006 (attached as Exhibits A, B and C, respectively, to the  
17 Declaration of William M. Isenberg, M.D., Ph.D., in Support of Defendants' Special  
18 Motion to Strike Plaintiff's Complaint Under C.C.P. 425.16, filed concurrently herewith.  
19 *See Paulson v. Carter*, 2005 U.S. Dist. LEXIS 10724, \*29 n.2 (D. Or. 2005) (taking  
20 judicial notice of Hospital Bylaws where the Complaint referenced one of the Bylaws);  
21 *see also Hott*, 92 F. Supp. 2d at 998 ("The court's review [on a Rule 12(b)(6) motion to  
22 dismiss] is limited to the face of the complaint, documents referenced by the complaint,

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1 and matters of which the court may take judicial notice."); see *also* Exhibit C (Complaint)  
2 at ¶ 28 (referencing Article VII, Section 8.36 of the [Summit] Medical Staff Bylaws).

3 DATED: May 30, 2007

Respectfully submitted,

4 KAUFF McClain & McGuire LLP

5  
6 By: /s/  
7 MATTHEW P. VANDALL

8 Attorneys for Defendants  
9 ALTA BATES SUMMIT MEDICAL  
10 CENTER; RUSSELL D. STANTEN, M.D.,  
11 LEIGH I.G. IVERSON, M.D., STEVEN A.  
12 STANTEN, M.D., and WILLIAM M.  
13 ISENBERG, M.D., Ph.D.  
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**EXHIBIT A**

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FILED ALAMEDA COUNTY

APR -3 2007

CLERK OF SUPERIOR COURT

BY *Alphonse Oatis*  
DEPUTY

G. SCOTT EMBLIDGE, State Bar No. 121613  
 RACHEL J. SATER, State Bar No. 147976  
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Attorneys for Coyness L. Ennix Jr., M.D.

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## COUNTY OF ALAMEDA

COYNESS L. ENNIX JR., M.D., as an  
 individual and in his representative  
 capacity under Business & Professions  
 Code § 17200 *et seq.*,

Plaintiff,

vs.

RUSSELL D. STANTEN, M.D., LEIGH  
 I. G. IVERSON, M.D., STEVEN A.  
 STANTEN, M.D., WILLIAM M.  
 ISENBERG, M.D., Ph.D., ALTA BATES  
 SUMMIT MEDICAL CENTER and does  
 1 through 100,

Defendants.

Case No.: **PG07318653**

## COMPLAINT RE:

- (1) RACE DISCRIMINATION;
- (2) VIOLATION OF UNRUH ACT;
- (3) VIOLATION OF CARTWRIGHT ACT;
- (4) TORTIOUS INTERFERENCE WITH RIGHT TO PRACTICE PROFESSION;
- (5) BUSINESS & PROFESSIONS CODE § 17200, *et seq.*

## DEMAND FOR JURY TRIAL

BY FAX

NATURE OF ACTION

1. This case arises out of the concerted effort of medical doctors Steven A. Stanten, M.D., Russell D. Stanten, M.D., Leigh I.G. Iverson, M.D., and William M. Isenberg, M.D., Ph.D. (collectively "Individual Defendants") and Alta Bates Summit Medical Center ("Alta Bates Summit") to destroy the career of Plaintiff Coyness L. Ennix Jr., M.D. ("Plaintiff or "Dr. Ennix"), a highly experienced and accomplished African American cardiac surgeon. Defendants sponsored, initiated and/or participated in a lengthy sham peer review process that falsely sought

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1 to blame Dr. Ennix for complications some patients experienced during or following cardiac  
2 surgery—unsurprising complications all Defendants knew did not reflect any lack of skill or  
3 attention by Dr. Ennix. After subjecting Dr. Ennix to months of an unwarranted and humiliating  
4 review process, Alta Bates Summit suspended Dr. Ennix's surgical privileges based on  
5 demonstrably false accusations that Dr. Ennix had neglected patients, and then reinstated Dr.  
6 Ennix's surgical privileges only upon the condition that he have a proctor present at all surgeries.  
7 During this proctorship period, Defendant Isenberg, then President of the Medical Staff of the  
8 Summit Campus, Alta Bates Summit, summarily suspended Dr. Ennix a second time without  
9 justification and without first consulting the proctors. Months later, Defendants refused to  
10 remove the proctoring requirement even after the panel of proctors—having observed twenty-  
11 nine of Dr. Ennix's surgeries—unanimously called for the lifting of the proctoring restriction.  
12 Dr. Ennix suffered hundreds of thousands of dollars in lost income, devastating damage to his  
13 reputation, and emotional distress as a result of Defendants' groundless and malicious actions.  
14 Dr. Ennix is informed and believes that Alta Bates Summit has not subjected a white surgeon to  
15 such harsh and unjustified treatment.

16       2. Throughout this tortuous peer review process, all evaluations of Dr. Ennix's  
17 performance provided by qualified, disinterested experts found no deviation from the standard of  
18 care and no justification for the restrictions placed on Dr. Ennix's privileges. Indeed, the  
19 Medical Board of California, after evaluating cases in question and the actions taken against Dr.  
20 Ennix, concluded that "[t]here is no evidence whatsoever, in these reviewed cases, that the  
21 conduct of Dr. Ennix, preoperatively, intraoperatively, or postoperatively, has violated the  
22 standard of practice in cardiac surgery." Thus, Defendants could not reasonably have believed  
23 that the restrictions they imposed on Dr. Ennix were warranted by the facts or furthered quality  
24 health care; rather, their actions were motivated by malice and racial discrimination.

25       3. This lawsuit claims race discrimination (42 U.S.C. Section 1981), violations of  
26 the Unruh Act (California Civil Code Section 51 *et seq.*), interference with Dr. Ennix's right to  
27 practice his profession, violations of the Cartwright Act (California Business & Professions Code  
28 Section 16700, *et seq.*), and violations of California's Unfair Competition Law (Business &

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T-659 P.006/019 F-203

1 Professions Code Section 17200, *et seq.*), against Alta Bates Summit, the Individual Defendants  
2 and Does 1-100. As detailed below, Alta Bates Summit and the Individual Defendants have  
3 discriminated against Dr. Ennix based on his race, conspired to injure Dr. Ennix's business  
4 prospects and reputation, and otherwise caused damage to Dr. Ennix and his career.

#### 5 PARTIES AND JURISDICTION

6 4. Plaintiff Coyness L. Ennix Jr., M.D., is a certified cardiac and thoracic surgeon  
7 and the only African American lead cardiac surgeon at Alta Bates Summit. Dr. Ennix obtained  
8 certification by the American Board of Surgery in 1978 and the American Board of Thoracic and  
9 Cardiac Surgery in 1980, 1989 and 1999. Dr. Ennix currently has surgical privileges at the  
10 Summit and Alta Bates Campuses of Alta Bates Summit, Doctors Hospital in San Pablo,  
11 Highland General Hospital in Oakland, San Ramon Medical Center in San Ramon, and Valley  
12 Care Hospital in Livermore. During the time period relevant to this suit, Dr. Ennix held surgical  
13 privileges at Alta Bates Summit, Summit Campus, and Doctors Hospital in San Pablo. Dr. Ennix  
14 has held numerous hospital administrative appointments, including Medical Director and Chief  
15 of Cardiac Surgery at Alta Bates Medical Center; Chairman of the Cardiac Surgery Quality  
16 Management Committee at Alta Bates; Editor-in-Chief of the Alta Bates Cardiac & Vascular  
17 Rounds Newsletter; and Director of the Annual Cardiology Conference at Alta Bates. Dr. Ennix  
18 has also served on the Sutter Cardiac Services Oversight Committee. Dr. Ennix's teaching  
19 appointments have included Assistant Clinical Professor of Surgery at the University of  
20 California and Assistant Professor of Surgery at Baylor College of Medicine in Houston, Texas.  
21 Dr. Ennix is the founder and past president of the Bay Area Society of Thoracic Surgeons and  
22 past president of the California affiliate of the American Heart Association. He received the  
23 Frank Jordan Outstanding Citizen Award and American Heart Association Honored Citizen  
24 Award for his professional and civic contributions. Dr. Ennix has written and lectured  
25 extensively in his field of cardiac surgery. Dr. Ennix currently serves as Secretary of the Bay  
26 Area Society of Thoracic Surgeons, President of the Marcus Foster Educational Institute,  
27 member of the Clinical Advisory Panel of the California CABG Outcomes Reporting Program  
28 and Co-Chairman of Mayor Ron Dellums' Oakland Health Task Force.

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T-659 P.007/019 F-203

1           5.     Dr. Ennix resides in Piedmont, California. Plaintiff sues on his own behalf and on  
2 behalf of the general public.

3           6.     During the period of time relevant to this suit, Dr. Ennix, Defendant Russell  
4 Stanten, Defendant Leigh Iverson and Junaid Khan, M.D. co-owned a cardiac surgery  
5 partnership known as East Bay Cardiac Surgery Center, Medical Group.

6           7.     Plaintiff is informed and believes that defendant Alta Bates Summit is a non-  
7 profit entity doing business in Oakland and Berkeley, California.

8           8.     Defendant Steven Stanten, M.D. is Chair of the Department of Surgery and the  
9 Surgical Peer Review Committee at Alta Bates Summit, Summit Campus. Plaintiff is informed  
10 and believes that Steven Stanten is a resident of Contra Costa County.

11          9.     Defendant Russell D. Stanten, M.D. is a cardiac surgeon at the Summit Campus  
12 of Alta Bates Summit and is the brother of Defendant Steven Stanten. Russell Stanten was a  
13 member of the Surgical Peer Review Committee, Chief of Cardiac Surgery and a partner in the  
14 East Bay Cardiac Surgery Center, Medical Group during the time relevant to this suit. Plaintiff  
15 is informed and believes that Russell Stanten is a resident of Contra Costa County.

16          10.    Defendant Leigh I.G. Iverson ("Iverson") was a cardiac surgeon at Alta Bates  
17 Summit, a member of the Surgical Peer Review Committee and a partner in the East Bay Cardiac  
18 Surgery Center, Medical Group during the time relevant to this suit. Plaintiff is informed and  
19 believes that Iverson is a resident of Monterey County.

20          11.    Defendant William M. Isenberg, M.D., Ph.D. ("Isenberg") is a member of the  
21 Medical Executive Committee at the Summit Campus of Alta Bates Summit and was the  
22 President of the Medical Staff, Summit Campus, at Alta Bates Summit during the time period  
23 relevant to this suit.

24          12.    Plaintiff is informed and believes that Defendants, and each of them, including all  
25 Doe Defendants, were at all times relevant the agents and/or employees of every other  
26 Defendant, and in doing the things herein alleged were acting within the course and scope of that  
27 agency and with the knowledge and/or consent of each co-Defendant. Plaintiff is further  
28 informed and believes that each of the Defendants herein gave consent to, ratified, and



1 authorized the acts alleged herein to each of the remaining Defendants. Defendants are sued  
2 both in their own right and on the basis of respondeat superior.

3 13. The true names and capacities of Defendants named herein as Does 1 through  
4 100, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff,  
5 who therefore sues such Defendants by such fictitious names pursuant to California Code of  
6 Civil Procedure § 474. Plaintiff is informed and believes that Doe Defendants are California  
7 residents and/or unknown business entities authorized to do business in the State of California.  
8 Plaintiff will amend this complaint to show the true names and capacities of such Doe  
9 Defendants when and as they have been determined.

10 14. Plaintiff is informed and believes that each Defendant is responsible for Plaintiff's  
11 damages as alleged herein and each is jointly and severally liable with all other Defendants.

12 15. Venue is proper because Defendant Alta Bates Summit has its principal place of  
13 business in Alameda County.

#### 14 ALLEGATIONS

15 16. From 1981 to 1993, Dr. Ennix was a partner in a five-person cardiac surgery  
16 group which included Iverson, practicing at Summit Hospital in Oakland. In 1993, Dr. Ennix  
17 and another partner, Dr. J. Nilas Young ("Young"), separated from the group and commenced an  
18 independent cardiac surgery program at Alta Bates Hospital in Berkeley. The Alta Bates  
19 program proved to be very lucrative for Drs. Ennix and Young, which lead to resentment and  
20 friction among Dr. Ennix's former partners, including Iverson.

21 17. In April 2001, Dr. J. Nilas Young left the practice at the Alta Bates Campus. In  
22 the fall of 2001, Dr. Ennix merged his practice with that of Junaid Khan, M.D., and Defendants  
23 Iverson and Russell Stanten to form the East Bay Cardiac Surgery Center, Medical Group. Dr.  
24 Ennix championed the cause of consolidating cardiac surgeries from Alta Bates with cardiac  
25 surgeries at the Summit Campus. In the Fall of 2002, the medical staff and administration agreed  
26 to close the Alta Bates cardiac surgery program.

27 18. In 2003, Dr. Ennix was the busiest surgeon performing cardiac procedures among  
28 the private doctors practicing at the Summit Campus. During that year, Dr. Ennix began

04-02-2007 02:46pm From: MOSCONE EMBLIDGE &amp; QUADRA LLP

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T-658 P.008/018 F-203

1 promoting the idea of developing a minimally invasive cardiac surgery and robotic surgery  
2 program at Summit. Minimally invasive cardiac surgery was a relatively new technique  
3 requiring specialized equipment and training. The technique allows surgeons to perform cardiac  
4 surgery by way of a small incision on the side of the rib cage, instead of by opening the chest at  
5 the sternum, which can cause substantial noticeable scarring. In partnership with the Alta Bates  
6 Foundation, Dr. Ennix helped to raise one million dollars to fund purchase of the robot, and  
7 attended numerous training programs throughout the United States on minimally invasive and  
8 robotic techniques. Defendant Steven Stanten, chair of the Department of Surgery, was  
9 interested in the use of the robot for general surgery and assisted in the establishment of a  
10 Robotic Surgical Program at Summit.

11 19. In January and February of 2004, Dr. Ennix performed four minimally invasive  
12 cardiac surgery procedures (also known as "Heart Port" procedures) at the Summit Campus. In  
13 these cases, Dr. Ennix and the surgical staff encountered issues such as prolonged procedure  
14 time, increased blood usage and conversion to the more traditional approach. None of these  
15 issues was unexpected given the newness of the minimally invasive surgical technique  
16 employed. Nevertheless, these four cases came to the attention of the Defendant Steven Stanten,  
17 Chair of the Department of Surgery and Chair of the Surgical Peer Review Committee ("SPRC")  
18 at the Summit Campus, who called for a moratorium on all minimally invasive cardiac surgery  
19 procedures, pending further evaluation. Dr. Ennix was the only surgeon to have completed any  
20 minimally invasive cardiac procedures at that time, and Dr. Ennix suspended use of this  
21 technique in compliance with the moratorium. Dr. Steven Stanten asked another cardiac  
22 surgeon, Dr. Hon Lee, an Asian American and a member of the Kaiser Permanente Medical  
23 Group, to review the four minimally invasive surgeries with regard to the standard of care. Dr.  
24 Lee concluded that there were no patient care concerns on any of the four cases.

25 20. The SPRC reviewed Dr. Lee's report on April 10, 2004. The SPRC included  
26 Chair Steven Stanten (a general surgeon), his brother Russell Stanten and Iverson—the sole  
27 cardiac surgeons on the committee and Dr. Ennix's partners—as well as a urologist, an  
28 Ear/Nose/Throat Specialist and several general surgeons. Despite Dr. Lee's clearing of the four

1 cases of any patient care issues and despite his own lack of expertise in cardiac surgery, Steven  
2 Stanten expressed his concern that the cases presented care issues. Minutes from this meeting  
3 reflect that the SPRC questioned whether the long operating times were justified by the new  
4 technique and expressed concern regarding Dr. Ennix's overall patient selection, technical skills,  
5 and judgment. The SPRC declined to accept Dr. Lee's findings that issues with the cases were  
6 of documentation, not care. Dr. Ennix was not afforded an opportunity to address the SPRC  
7 regarding the four minimally invasive cases or the general concerns referred to in the minutes.  
8 Plaintiff is informed and believes that his partners Iverson and Russell Stanten supported Steven  
9 Stanten's initiative to further investigate Dr. Ennix in spite of Dr. Lee's report: as the only  
10 cardiac surgeons on the SPRC, their opinions would have carried significant weight with the  
11 SPRC.

12 21. On April 16, 2004, Dr. Steven Stanten and Dr. Isenberg informed Dr. Ennix of the  
13 SPRC's conclusions regarding the four minimally invasive procedures and other generalized  
14 concerns. Steven Stanten and Isenberg also informed Dr. Ennix that the moratorium on  
15 performing minimally invasive procedures had been lifted, allowing other surgeons, such as  
16 Steven Stanten's brother, Russell Stanten, to perform minimally invasive cardiac surgery  
17 procedures. However, Steven Stanten and Isenberg recommended that Dr. Ennix continue to  
18 refrain from performing the minimally invasive cardiac surgery procedures until the issues raised  
19 by the SPRC could be resolved by an ad hoc committee. Thereafter, despite the fact that Dr.  
20 Ennix had voluntarily suspended performing minimally invasive procedures before the SPRC  
21 decided to investigate his performance, Isenberg submitted a report to the Medical Board of  
22 California and the National Practitioner Data Bank stating that Dr. Ennix had suspended use of  
23 the procedure while under investigation.

24 22. Several months later, Isenberg and the MEC established an Ad Hoc Committee  
25 ("AHC") to review the four minimally invasive procedures and the other generalized concerns  
26 discussed in the April 10, 2004 SPRC meeting. Although there were ten cardiac surgeons and  
27 more than forty cardiologists on the medical staff, the AHC did not include any cardiac surgeons  
28 or cardiologists. Defendant Isenberg, President of the Medical Staff, appointed Lamont Paxton

1 to be Chairman of the AHC. Paxton was a member of the SPRC who had presumably attended  
2 the April 10, 2004 meeting and knew of comments regarding Dr. Ennix by Steven Stanten and  
3 Dr. Ennix's business partners Russell Stanten and Iverson.

4 23. After many months of delay, and without affording Dr. Ennix the opportunity to  
5 appear before the AHC despite his requests, on January 4, 2005, the AHC requested that a  
6 private, outside peer review organization called National Medical Audit ("NMA") review not  
7 only the four minimally invasive cases, but also an additional six cases that had previously  
8 undergone peer review by the Summit Cardiac Surgery Peer Review Committee and had been  
9 found to present no patient care issues. Dr. Ennix objected to the referral to NMA, which  
10 appeared to be a sham outfit, comprised of a nephrologist who had not practiced medicine in  
11 many years, a surgeon with a very poor performance record, and a surgeon who had never  
12 practiced in California. On May 3, 2005, the NMA returned an unsigned report harshly  
13 criticizing Dr. Ennix's performance on all ten of the reviewed cases. The NMA report was at  
14 odds with the Summit Cardiac Surgery Peer Review, Dr. Lee's report, subsequent reviews of the  
15 cases by several nationally renowned cardiac surgeons and, ultimately, the review by the  
16 Medical Board of the State of California.

17 24. On May 4, 2005, Dr. Ennix performed an operation in which he replaced two  
18 valves in a young male patient ("double valve patient"). The surgery went very well. The next  
19 day, Dr. Ennix performed surgery on two very ill patients. That day, Dr. Ennix made rounds on  
20 the double valve patient twice—once in the morning and once in the afternoon—as is  
21 documented in the nurses' notes. Dr. Ennix did not himself note his rounds on the double valve  
22 patient because he was busy with the two surgeries scheduled that day. The next day, May 6,  
23 2005, Dr. Ennix made rounds on the double valve patient again, noted those rounds, and then  
24 noted his previous rounds on that patient which he had been unable to record the day before.

25 25. On May 11, 2005, Defendant Isenberg, President of the Medical Staff, summarily  
26 suspended Dr. Ennix alleging that he had placed the double valve patient in danger by not  
27 making rounds on the patient on May 5<sup>th</sup>. Isenberg accused Dr. Ennix of not only failing to see  
28 the double valve patient, but also of falsifying the record claiming that he had seen the patient.

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1 Dr. Ennix produced a letter from the on-duty nurse as well as nurses' notes verifying that he had  
2 seen the patient more than once on May 5<sup>th</sup>. Despite this, the MEC upheld the suspension on  
3 May 18, 2005 pending the outcome of the AHC process.

4 26. Faced with a complete loss of his ability to practice, Dr. Ennix asked Dr. Isenberg  
5 to at least allow him to continue surgical assisting. The MEC accepted Dr. Ennix's proposal.

6 27. Dr. Ennix requested a hearing pursuant to Article VIII, Section 8.36 of the  
7 Medical Staff Bylaws to review Isenberg's summary suspension and the MEC's subsequent  
8 upholding of that suspension. However, Isenberg and Alta Bates Summit insisted that no hearing  
9 rights attached to these actions because Dr. Ennix "expressly stipulated" to surgical assisting in  
10 lieu of suspension.

11 28. Despite the fact that the medical staff includes several other cardiac surgeons,  
12 plaintiff is informed and believes that the AHC solicited the help of Dr. Ennix's partners Russell  
13 Stanten and Iverson—both of whom had participated in the initial SPRC meetings regarding Dr.  
14 Ennix initiated by Steven Stanten, the brother of Russell Stanten—to help determine the validity  
15 of the NMA report. Russell Stanten concluded that the report was very thorough and valid. The  
16 AHC delivered a harsh review of Dr. Ennix that recommended reinstating Dr. Ennix's surgical  
17 privileges subject to the requirement that he have a proctor present. On September 7, 2005, the  
18 MEC upheld the AHC's report and recommendation.

19 29. Approximately forty-five days later, Alta Bates Summit gave Dr. Ennix two  
20 choices: either appeal the MEC's decision and remain suspended indefinitely or accept a  
21 condition that he have a proctor present at all his surgeries. In order to begin rebuilding his  
22 surgical practice as quickly as possible, Dr. Ennix was forced to opt for the latter course. On  
23 October 25, 2005, Dr. Ennix voluntarily separated from his business partners, secured six staff  
24 cardiac surgeons from the Kaiser Permanente Medical Group to serve as proctors, and began a  
25 solo cardiac surgery practice which he retains today.

26 30. On December 30, 2005, in the final days of Isenberg's tenure as President of the  
27 Medical Staff, Dr. Isenberg, an obstetrician and gynecologist, again summarily suspended Dr.  
28 Ennix' privileges without justification. Further, Isenberg imposed the summary suspension

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1 without first consulting the proctors who had been observing Dr. Ennix' surgeries. After  
2 consulting officers of the MEC, Dr. Isenberg reinstated Dr. Ennix' proctor-restricted privileges  
3 on January 6, 2006.

4 31. On April 19, 2006, the proctors reported on the twenty-nine surgical cases they  
5 had proctored, stating that "[i]t was the unanimous opinion that Dr. Ennix met" or exceeded  
6 expectations in pre-operative and post-operative phases, and met the standard of care in the peri-  
7 operative phases. The proctors went on to state "[i]t is with unanimous decision from the group  
8 of proctors, that we recommend the proctorship be terminated and that Dr. Ennix be reinstated to  
9 the medical staff with full unrestricted privileges."

10 32. Despite the proctors' evaluation and recommendation, the MEC voted to continue  
11 the proctorship requirement, stating that 29 cases was an insufficient number. The MEC finally  
12 voted to remove the proctoring requirement on July 11, 2006.

13 33. Dr. Ennix endured fourteen months of restricted privileges, costing him and his  
14 family hundreds of thousands of dollars in lost profits, emotional distress and damage to his  
15 reputation. Until only recently, Dr. Ennix' cases were subject to ongoing review by the Chief of  
16 Cardiac Surgery, Dr. Russell Stanten, upon the recommendation of the AHC. Plaintiff is  
17 informed and believes that each Defendant, and especially Plaintiff's former partners and fellow  
18 cardiac surgeons Russell Stanten and Leigh Iverson, knew that the four minimally invasive cases  
19 were not below the standard of care; particularly in light of Dr. Hon Lee's report confirming this.  
20 Plaintiff is further informed and believes that Steven Stanten, Russell Stanten, Isenberg and  
21 Iverson knew that the other cases reviewed by the AHC were within the standard of care, as the  
22 Summit Cardiac Surgery Peer Review Committee had concluded. Plaintiff is further informed  
23 and believes that Isenberg and the MEC acted with racially-based malice and in reckless  
24 disregard of the facts in suspending Plaintiff's privileges, and subjected Dr. Ennix to far harsher  
25 treatment than similarly situated white physicians.

26 34. Individual Defendants provided information to the SPRC, AHC, NMA and MEC  
27 that they knew to be false. Defendants' professional review actions—including the SPRC's  
28 decision to review Dr. Ennix's performance notwithstanding that Dr. Lee and the Summit



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1 Cardiac Surgery Peer Review Committee had previously determined there had been no breach in  
2 the standard of care; Dr. Isenberg's report to the Medical Board of California and the National  
3 Practitioner Data Bank that Dr. Ennix suspended use of minimally invasive procedures while  
4 under investigation; the MEC's and SPRC's assignment of the review to the AHC which  
5 included no cardiac surgeons or cardiologists, thus ensuring that the AHC would have no means  
6 to critically assess the facts; the SPRC's failure to allow Dr. Ennix to address it regarding the  
7 issues; the AHC's referral of the matter to the sham peer review outfit NMA; the suspension of  
8 Dr. Ennix's privileges based on demonstrably false allegations that he neglected a patient; Dr.  
9 Isenberg's second unwarranted summary suspension of Dr. Ennix's privileges; the AHC's heavy  
10 reliance on the false, malicious and self-serving representations of Dr. Ennix's partners Russell  
11 Stanten and Iverson in their evaluation of the NMA report and Dr. Ennix's performance; the  
12 AHC's factually groundless report and recommendation; the MEC's decision on that  
13 recommendation to require Dr. Ennix to practice only with a proctor present; and finally the  
14 MEC's decision to continue the proctorship requirement despite the unanimous opinion of all six  
15 proctors that the requirement should be immediately lifted (collectively "Professional Review  
16 Actions")—were not taken in the reasonable belief that they furthered quality health care. Nor  
17 were these actions taken after a reasonable effort to obtain the facts, or in the reasonable belief  
18 that the actions were warranted by the facts. Rather, Defendants took the Professional Review  
19 Actions against Dr. Ennix with the malicious and racially-motivated intent to destroy Dr. Ennix's  
20 career and eliminate one of the most successful cardiac surgeons practicing at Alta Bates  
21 Summit.

22 35. Plaintiff exhausted all administrative remedies available to him.

23 **FIRST CAUSE OF ACTION**

24 Race Discrimination in violation of 42 U.S.C. § 1981  
(Against Alta Bates Summit and Does 1-100)

25 36. Plaintiff incorporates by reference all paragraphs set forth above as though fully  
26 set forth herein.

04-02-2007 02:47pm From-MOSCONE EMBLIDGE &amp; QUADRA LLP

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T-659 P.015/019 F-203

1 37. Alta Bates Summit's conduct as alleged in this complaint violates 42 U.S.C. §  
2 1981, which guarantees that all citizens shall have the same rights under the law as are enjoyed  
3 by white citizens.

4 38. Dr. Ennix is African American.

5 39. In taking the Professional Review Actions, Alta Bates Summit intended to  
6 discriminate against Dr. Ennix on the basis of Dr. Ennix's race and treated Dr. Ennix differently  
7 than similarly situated white physicians.

8 40. Such actions and discrimination concerned Dr. Ennix's abilities to perform his  
9 contractual duties with Alta Bates Summit and his patients and Dr. Ennix's abilities to enjoy the  
10 benefits, privileges, terms, and conditions of those contractual relationships.

11 41. Dr. Ennix suffered damages proximately caused by Alta Bates Summit's conduct.

12 **SECOND CAUSE OF ACTION**

13 Race Discrimination in violation of Unruh Civil Rights Act  
14 (Against Alta Bates Summit and Does 1-100)

15 42. Plaintiff incorporates by reference all paragraphs set forth above as though fully  
16 set forth herein.

17 43. The Professional Review Actions violate California Civil Code § 51, *et seq.*,  
18 which prohibits any business establishment from discriminating against any person on account of  
19 race.

20 44. In taking the Professional Review Actions, Defendants intended to discriminate  
21 against Dr. Ennix on the basis of Dr. Ennix's race and treated him differently than they treat  
22 similarly situated white physicians.

23 45. As alleged herein, Defendants specifically discriminated against Dr. Ennix  
24 because of Dr. Ennix's race in taking the Professional Review Actions. Defendants denied Dr.  
25 Ennix full and equal advantages and privileges because of Dr. Ennix's race.

26 46. Dr. Ennix suffered damages proximately caused by Defendants' conduct.  
27  
28



04-02-2007 02:47pm From: MOSCONE EMBLIDGE &amp; QUADRA LLP

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**THIRD CAUSE OF ACTION****Violation of Cartwright Act**

(Against Iverson, Russell Stanten, Steven Stanten, William Isenberg and Does 1-100)

47. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

48. Iverson, Russell Stanten, Steven Stanten and Isenberg formed and operated a conspiracy or combination to provide false information and false opinions regarding Dr. Ennix's professional competence, judgment and skill, to initiate a sham peer review process against Dr. Ennix, and to impose unwarranted and professionally and financially devastating restrictions on his surgical privileges.

49. The purpose of the conspiracy was to restrain trade by eliminating Dr. Ennix from the pool of lead cardiac surgeons available in his region.

50. Dr. Ennix suffered damages proximately caused by Defendants' conspiratorial conduct.

**FOURTH CAUSE OF ACTION****Interference with Right to Practice Profession**

(Against All Defendants)

51. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

52. Defendants' conduct as alleged in this complaint violates the common law doctrine that prohibits intentional interference with one's right to practice a profession by means that are either unlawful or that are otherwise lawful, but unprivileged or without sufficient justification.

53. By taking the Professional Review Actions which were factually unwarranted, not in furtherance of quality health care and motivated by race-based discrimination, Defendants have unlawfully interfered with Dr. Ennix's right to practice his profession without privilege or sufficient justification.

54. Dr. Ennix suffered damages proximately caused by Defendants' conduct.

04-02-2007 02:48pm From: MOSCONE EMBLIDGE &amp; QUADRA LLP

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T-859 P.017/019 F-203

**FIFTH CAUSE OF ACTION**

Business & Professions Code Section 17200, *et seq.*  
(Against All Defendants)

55. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

56. The Professional Review Actions violate Business and Professions Code §§ 17200 *et seq.*, which prohibit unlawful, unfair, and/or fraudulent business acts or practices.

57. As alleged herein, Defendants' Professional Review Actions were unlawful, in that the Actions discriminated against Dr. Ennix based on his race, and lacked factual justification. As such, Defendants' actions constitute an unlawful, unfair, and/or fraudulent business act or practice within the meaning of Business and Professions Code §§ 17200 *et seq.*

58. Dr. Ennix lost profits and suffered injury in fact as a result of Defendants' actions.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against the defendants, and each of them, as follows:

1. For an award of compensatory, restitution, disgorgement and other special and general damages according to proof;
2. For an award of punitive damages;
3. For an award of interest, including prejudgment interest, at the legal rate;
4. For an award of costs of suit incurred herein on all causes of action;
5. For an award of attorneys' fees;
6. For an injunction pursuant to California Business & Professions Code Section 17203 requiring Alta Bates Summit to take immediate action to prevent future racial-based discrimination against Plaintiff and any Alta Bates Summit employees;
7. For such other and further relief as this court deems just and proper.

**JURY DEMAND**

Plaintiff requests this matter be tried before a jury.

04-02-2007 02:48pm From-MOSCONE EMBLIDGE & QUADRA LLP

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T-659 P.019/019 F-203

1 Dated: April 2, 2007

Respectfully Submitted,

MOSCONE, EMBLIDGE & QUADRA, LLP

2  
3  
4 By: 

G. Scott Emblidge

Rachel J. Sater

Andrew E. Sweet

5  
6  
7 Attorneys for Coyness L. Ennix Jr., M.D.  
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04-02-2007 02:48pm From-MOSCONE EMBIDGE &amp; QUADRA LLP

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**VERIFICATION**

I, Coyness L. Ennix Jr., M.D., declare as follows:

I am the Plaintiff in *Ennix v. Stanton, et al.* I have read the foregoing  
**COMPLAINT** and know its contents.

I am a party to this action. The matters stated in the foregoing document are true to my  
own knowledge, except as to those matters that are stated on information and belief and, as to  
those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Executed this 29 day of March 2007, at OAKLAND California

  
COYNESS L. ENNIX JR., M.D.

*Ennix v. Stanton, et al.*

## **EXHIBIT B**



CIV-120

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): G. Scott Emblidge, SBN 121613 Moscone, Emblidge & Quadra, LLP 220 Montgomery Street Suite 2100 San Francisco, California 94104		TELEPHONE NO.: (415) 362-2599	FOR COURT USE ONLY  <b>FILED</b> ALAMEDA COUNTY  MAY 11 2007  CLERK OF THE SUPERIOR COURT By <u>Guthrie D. Boyle</u> Deputy
ATTORNEY FOR (Name): Plaintiff Coyness L. Ennix Jr., M.D. Insert name of court and name of judicial district and branch court, if any: Alameda County Superior Court Rene C. Davidson Courthouse			
PLAINTIFF/PETITIONER: Coyness L. Ennix Jr., M.D.  DEFENDANT/RESPONDENT: Russell D. Stanten, M.D., Leigh I.G. Iverson, M.D., William M. Isenberg, M.D., Ph.D., Alta Bates Summit Medical Center			
<b>NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Civil Rights		CASE NUMBER: RG07318658	

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. (Attach a copy completed by the clerk.)

Date: May 11, 2007

G. Scott Emblidge

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

**BY FAX**  
  
 (SIGNATURE)

### PROOF OF SERVICE

- I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is:  
 Moscone, Emblidge & Quadra, LLP 220 Montgomery Street, Suite 2100  
 San Francisco, California 94104
- ☒ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
  - ☐ I deposited the envelope with the United States Postal Service.
  - ☒ I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  - Date of deposit: May 11, 2007
  - Place of deposit (city and state): San Francisco, CA
  - Addressed as follows (name and address):  
 Matt Vandall, Kauff McClain & McGuire LLP  
 One Post Street, Suite 2600  
 San Francisco, CA 94104
- ☐ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:  
 Name: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_ Address: \_\_\_\_\_

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 11, 2007

Laura Helland

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

**EXHIBIT A**

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): <b>G. Scott Emblidge, SBN 121613</b> <b>Moscone, Emblidge &amp; Quadra, LLP</b> <b>220 Montgomery Street</b> <b>Suite 2100</b> <b>San Francisco, CA 94104</b>		TELEPHONE NO.: <b>(415) 362-3599</b>	FOR COURT USE ONLY  ENDORSED FILED ALAMEDA COUNTY MAY 10 2007 CLERK OF THE SUPERIOR COURT By <u>CYNTHIA S. BOGLE</u> Deputy
ATTORNEY FOR (Name): <b>Plaintiff Coyness L. Ennix Jr., M.D.</b> Insert name of court and name of judicial district and branch court, if any: <b>Alameda County Superior Court</b> <b>Rene C. Davidson Courthouse</b>			
PLAINTIFF/PETITIONER: <b>COYNESS L. ENNIX JR., M.D.</b>  DEFENDANT/RESPONDENT: <b>RUSSELL D. STANTEN, M.D., LEIGH I. G. IVERSON, M.D., STEVEN A. STANTEN, M.D., WILLIAM M. ISENERO, M.D., Ph.D., ALTA BATES SUMMIT MEDICAL CENTER, and does 1-100.</b>			
<b>REQUEST FOR DISMISSAL</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): <b>Civil Rights</b>		CASE NUMBER:	

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☐ With prejudice      (2) ☒ Without prejudice
- b. (1) ☒ Complaint      (2) ☐ Petition  
 (3) ☐ Cross-complaint filed by (name):  
 (4) ☐ Cross-complaint filed by (name):  
 (5) ☐ Entire action of all parties and all causes of action  
 (6) ☐ Other (specify):\*

**BY FAX**

on (date):  
on (date):

Date: 5/10/07

G. Scott Emblidge, SBN 121613

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\* If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)  
Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner      ☐ Defendant/Respondent  
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(f) or (j).

(SIGNATURE)  
Attorney or party without attorney for:

- ☐ Plaintiff/Petitioner      ☐ Defendant/Respondent  
☐ Cross-complainant

(To be completed by clerk)

3. ☒ Dismissal entered as requested on (date): 5-10-07  
 4. ☐ Dismissal entered on (date): \_\_\_\_\_ as to only (name): \_\_\_\_\_  
 5. ☐ Dismissal not entered as requested for the following reasons (specify): \_\_\_\_\_  
 6. ☐ a. Attorney or party without attorney notified on (date): \_\_\_\_\_  
     b. Attorney or party without attorney not notified. Filing party failed to provide  
        ☐ a copy to conform      ☐ means to return conformed copy

Date: May 10, 2007

Clerk, by Cindy Bogle Deputy



## **EXHIBIT C**

G. SCOTT EMBLIDGE, State Bar No. 121613  
emblidge@meqlaw.com  
RACHEL J. SATER, State Bar No. 147976  
sater@meqlaw.com  
ANDREW E. SWEET, State Bar No. 160870  
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MOSCONE, EMBLIDGE, & QUADRA, LLP  
220 Montgomery Street, Suite 2100  
San Francisco, California 94104-4238  
Telephone: (415) 362-3599  
Facsimile: (415) 362-2006

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D., as an  
individual and in his representative  
capacity under Business & Professions  
Code § 17200 *et seq.*,

Plaintiff,

vs.

RUSSELL D. STANTEN, M.D., LEIGH  
I. G. IVERSON, M.D., STEVEN A.  
STANTEN, M.D., WILLIAM M.  
ISENBERG, M.D., Ph.D., ALTA BATES  
SUMMIT MEDICAL CENTER and does  
1 through 100,

Defendants.

**COMPLAINT RE:**  
(1) RACE DISCRIMINATION;  
(2) VIOLATION OF UNRUH ACT;  
(3) VIOLATION OF CARTWRIGHT  
ACT;  
(4) TORTIOUS INTERFERENCE  
WITH RIGHT TO PRACTICE  
PROFESSION;  
(5) CALIFORNIA BUSINESS &  
PROFESSIONS CODE § 17200, *et seq.*

**DEMAND FOR JURY TRIAL**

**JURISDICTION**

1. This action arises under 42 U.S.C. Section 1981 as hereinafter more fully appears.

**NATURE OF ACTION**

2. This case arises out of the concerted effort of medical doctors Steven A. Stanten, M.D., Russell D. Stanten, M.D., Leigh I.G. Iverson, M.D., and William M. Isenberg, M.D., Ph.D. (collectively "Individual Defendants") and Alta Bates Summit Medial Center ("Alta Bates Summit") to destroy the career of Plaintiff Coyness L. Ennix Jr., M.D. ("Plaintiff or "Dr.

1 Ennix”), a highly experienced and accomplished African American cardiac surgeon. Defendants  
2 sponsored, initiated and/or participated in a lengthy sham peer review process that falsely sought  
3 to blame Dr. Ennix for complications some patients experienced during or following cardiac  
4 surgery—unsurprising complications all Defendants knew did not reflect any lack of skill or  
5 attention by Dr. Ennix. After subjecting Dr. Ennix to months of an unwarranted and humiliating  
6 review process, Alta Bates Summit suspended Dr. Ennix’s surgical privileges based on  
7 demonstrably false accusations that Dr. Ennix had neglected patients, and then reinstated Dr.  
8 Ennix’s surgical privileges only upon the condition that he have a proctor present at all surgeries.  
9 During this proctorship period, Defendant Isenberg, then President of the Medical Staff of the  
10 Summit Campus, Alta Bates Summit, summarily suspended Dr. Ennix a second time without  
11 justification and without first consulting the proctors. Months later, Defendants refused to  
12 remove the proctoring requirement even after the panel of proctors—having observed twenty-  
13 nine of Dr. Ennix’s surgeries—unanimously called for the lifting of the proctoring restriction.  
14 Dr. Ennix suffered hundreds of thousands of dollars in lost income, devastating damage to his  
15 reputation, and emotional distress as a result of Defendants’ groundless and malicious actions.  
16 Dr. Ennix is informed and believes that Alta Bates Summit has not subjected a white surgeon to  
17 such harsh and unjustified treatment.

18 3. Throughout this tortuous peer review process, all evaluations of Dr. Ennix’s  
19 performance provided by qualified, disinterested experts found no deviation from the standard of  
20 care and no justification for the restrictions placed on Dr. Ennix’s privileges. Indeed, the  
21 Medical Board of California, after evaluating cases in question and the actions taken against Dr.  
22 Ennix, concluded that “[t]here is no evidence whatsoever, in these reviewed cases, that the  
23 conduct of Dr. Ennix, preoperatively, intraoperatively, or postoperatively, has violated the  
24 standard of practice in cardiac surgery.” Thus, Defendants could not reasonably have believed  
25 that the restrictions they imposed on Dr. Ennix were warranted by the facts or furthered quality  
26 health care; rather, their actions were motivated by malice and racial discrimination.

27 4. This lawsuit claims race discrimination (42 U.S.C. Section 1981), violations of  
28 the Unruh Act (California Civil Code Section 51 *et seq.*), interference with Dr. Ennix’s right to

1 practice his profession, violations of the Cartwright Act (California Business & Professions Code  
 2 Section 16700, *et seq.*), and violations of California's Unfair Competition Law (Business &  
 3 Professions Code Section 17200, *et seq.*), against Alta Bates Summit, the Individual Defendants  
 4 and Does 1-100. As detailed below, Alta Bates Summit and the Individual Defendants have  
 5 discriminated against Dr. Ennix based on his race, conspired to injure Dr. Ennix's business  
 6 prospects and reputation, and otherwise caused damage to Dr. Ennix and his career.

### 7 **PARTIES AND VENUE**

8 5. Plaintiff Coyness L. Ennix Jr., M.D., is a certified cardiac and thoracic surgeon  
 9 and the only African American lead cardiac surgeon at Alta Bates Summit. Dr. Ennix obtained  
 10 certification by the American Board of Surgery in 1978 and the American Board of Thoracic and  
 11 Cardiac Surgery in 1980, 1989 and 1999. Dr. Ennix currently has surgical privileges at the  
 12 Summit and Alta Bates Campuses of Alta Bates Summit, Doctors Hospital in San Pablo,  
 13 Highland General Hospital in Oakland, San Ramon Medical Center in San Ramon, and Valley  
 14 Care Hospital in Livermore. During the time period relevant to this suit, Dr. Ennix held surgical  
 15 privileges at Alta Bates Summit, Summit Campus, and Doctors Hospital in San Pablo. Dr. Ennix  
 16 has held numerous hospital administrative appointments, including Medical Director and Chief  
 17 of Cardiac Surgery at Alta Bates Medical Center; Chairman of the Cardiac Surgery Quality  
 18 Management Committee at Alta Bates; Editor-in-Chief of the Alta Bates Cardiac & Vascular  
 19 Rounds Newsletter; and Director of the Annual Cardiology Conference at Alta Bates. Dr. Ennix  
 20 has also served on the Sutter Cardiac Services Oversight Committee. Dr. Ennix's teaching  
 21 appointments have included Assistant Clinical Professor of Surgery at the University of  
 22 California and Assistant Professor of Surgery at Baylor College of Medicine in Houston, Texas.  
 23 Dr. Ennix is the founder and past president of the Bay Area Society of Thoracic Surgeons and  
 24 past president of the California affiliate of the American Heart Association. He received the  
 25 Frank Jordan Outstanding Citizen Award and American Heart Association Honored Citizen  
 26 Award for his professional and civic contributions. Dr. Ennix has written and lectured  
 27 extensively in his field of cardiac surgery. Dr. Ennix currently serves as Secretary of the Bay  
 28 Area Society of Thoracic Surgeons, President of the Marcus Foster Educational Institute,

1 member of the Clinical Advisory Panel of the California CABG Outcomes Reporting Program  
2 and Co-Chairman of Mayor Ron Dellums' Oakland Health Task Force.

3 6. Dr. Ennix resides in Piedmont, California. Plaintiff sues on his own behalf and on  
4 behalf of the general public.

5 7. During the period of time relevant to this suit, Dr. Ennix, Defendant Russell  
6 Stanten, Defendant Leigh Iverson and Junaid Khan, M.D. co-owned a cardiac surgery  
7 partnership known as East Bay Cardiac Surgery Center, Medical Group.

8 8. Plaintiff is informed and believes that defendant Alta Bates Summit is a non-  
9 profit entity doing business in Oakland and Berkeley, California.

10 9. Defendant Steven Stanten, M.D. is Chair of the Department of Surgery and the  
11 Surgical Peer Review Committee at Alta Bates Summit, Summit Campus. Plaintiff is informed  
12 and believes that Steven Stanten is a resident of Contra Costa County.

13 10. Defendant Russell D. Stanten, M.D. is a cardiac surgeon at the Summit Campus  
14 of Alta Bates Summit and is the brother of Defendant Steven Stanten. Russell Stanten was a  
15 member of the Surgical Peer Review Committee, Chief of Cardiac Surgery and a partner in the  
16 East Bay Cardiac Surgery Center, Medical Group during the time relevant to this suit. Plaintiff  
17 is informed and believes that Russell Stanten is a resident of Contra Costa County.

18 11. Defendant Leigh I.G. Iverson ("Iverson") was a cardiac surgeon at Alta Bates  
19 Summit, a member of the Surgical Peer Review Committee and a partner in the East Bay Cardiac  
20 Surgery Center, Medical Group during the time relevant to this suit. Plaintiff is informed and  
21 believes that Iverson is a resident of Monterey County.

22 12. Defendant William M. Isenberg, M.D., Ph.D. ("Isenberg") is a member of the  
23 Medical Executive Committee at the Summit Campus of Alta Bates Summit and was the  
24 President of the Medical Staff, Summit Campus, at Alta Bates Summit during the time period  
25 relevant to this suit.

26 13. Plaintiff is informed and believes that Defendants, and each of them, including all  
27 Doe Defendants, were at all times relevant the agents and/or employees of every other  
28 Defendant, and in doing the things herein alleged were acting within the course and scope of that

1 agency and with the knowledge and/or consent of each co-Defendant. Plaintiff is further  
2 informed and believes that each of the Defendants herein gave consent to, ratified, and  
3 authorized the acts alleged herein to each of the remaining Defendants. Defendants are sued  
4 both in their own right and on the basis of respondeat superior.

5 14. The true names and capacities of Defendants named herein as Does 1 through  
6 100, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff,  
7 who therefore sues such Defendants by such fictitious names pursuant to California Code of  
8 Civil Procedure § 474. Plaintiff is informed and believes that Doe Defendants are California  
9 residents and/or unknown business entities authorized to do business in the State of California.  
10 Plaintiff will amend this complaint to show the true names and capacities of such Doe  
11 Defendants when and as they have been determined.

12 15. Plaintiff is informed and believes that each Defendant is responsible for Plaintiff's  
13 damages as alleged herein and each is jointly and severally liable with all other Defendants.

14 16. Venue is proper in the Northern District because the events that gave rise to the  
15 claims occurred in that District.

#### 16 ALLEGATIONS

17 17. From 1981 to 1993, Dr. Ennix was a partner in a five-person cardiac surgery  
18 group which included Iverson, practicing at Summit Hospital in Oakland. In 1993, Dr. Ennix  
19 and another partner, Dr. J. Nilas Young ("Young"), separated from the group and commenced an  
20 independent cardiac surgery program at Alta Bates Hospital in Berkeley. The Alta Bates  
21 program proved to be very lucrative for Drs. Ennix and Young, which lead to resentment and  
22 friction among Dr. Ennix's former partners, including Iverson.

23 18. In April 2001, Dr. J. Nilas Young left the practice at the Alta Bates Campus. In  
24 the fall of 2001, Dr. Ennix merged his practice with that of Junaid Khan, M.D., and Defendants  
25 Iverson and Russell Stanten to form the East Bay Cardiac Surgery Center, Medical Group. Dr.  
26 Ennix championed the cause of consolidating cardiac surgeries from Alta Bates with cardiac  
27 surgeries at the Summit Campus. In the Fall of 2002, the medical staff and administration agreed  
28 to close the Alta Bates cardiac surgery program.

1           19.     In 2003, Dr. Ennix was the busiest surgeon performing cardiac procedures among  
2 the private doctors practicing at the Summit Campus. During that year, Dr. Ennix began  
3 promoting the idea of developing a minimally invasive cardiac surgery and robotic surgery  
4 program at Summit. Minimally invasive cardiac surgery was a relatively new technique  
5 requiring specialized equipment and training. The technique allows surgeons to perform cardiac  
6 surgery by way of a small incision on the side of the rib cage, instead of by opening the chest at  
7 the sternum, which can cause substantial noticeable scarring. In partnership with the Alta Bates  
8 Foundation, Dr. Ennix helped to raise one million dollars to fund purchase of the robot, and  
9 attended numerous training programs throughout the United States on minimally invasive and  
10 robotic techniques. Defendant Steven Stanten, chair of the Department of Surgery, was  
11 interested in the use of the robot for general surgery and assisted in the establishment of a  
12 Robotic Surgical Program at Summit.

13           20.     In January and February of 2004, Dr. Ennix performed four minimally invasive  
14 cardiac surgery procedures (also known as "Heart Port" procedures) at the Summit Campus. In  
15 these cases, Dr. Ennix and the surgical staff encountered issues such as prolonged procedure  
16 time, increased blood usage and conversion to the more traditional approach. None of these  
17 issues was unexpected given the newness of the minimally invasive surgical technique  
18 employed. Nevertheless, these four cases came to the attention of the Defendant Steven Stanten,  
19 Chair of the Department of Surgery and Chair of the Surgical Peer Review Committee ("SPRC")  
20 at the Summit Campus, who called for a moratorium on all minimally invasive cardiac surgery  
21 procedures, pending further evaluation. Dr. Ennix was the only surgeon to have completed any  
22 minimally invasive cardiac procedures at that time, and Dr. Ennix suspended use of this  
23 technique in compliance with the moratorium. Dr. Steven Stanten asked another cardiac  
24 surgeon, Dr. Hon Lee, an Asian American and a member of the Kaiser Permanente Medical  
25 Group, to review the four minimally invasive surgeries with regard to the standard of care. Dr.  
26 Lee concluded that there were no patient care concerns on any of the four cases.

27           21.     The SPRC reviewed Dr. Lee's report on April 10, 2004. The SPRC included  
28 Chair Steven Stanten (a general surgeon), his brother Russell Stanten and Iverson—the sole



1 cardiac surgeons on the committee and Dr. Ennix's partners—as well as a urologist, an  
2 Ear/Nose/Throat Specialist and several general surgeons. Despite Dr. Lee's clearing of the four  
3 cases of any patient care issues and despite his own lack of expertise in cardiac surgery, Steven  
4 Stanten expressed his concern that the cases presented care issues. Minutes from this meeting  
5 reflect that the SPRC questioned whether the long operating times were justified by the new  
6 technique and expressed concern regarding Dr. Ennix's overall patient selection, technical skills,  
7 and judgment. The SPRC declined to accept Dr. Lee's findings that issues with the cases were  
8 of documentation, not care. Dr. Ennix was not afforded an opportunity to address the SPRC  
9 regarding the four minimally invasive cases or the general concerns referred to in the minutes.  
10 Plaintiff is informed and believes that his partners Iverson and Russell Stanten supported Steven  
11 Stanten's initiative to further investigate Dr. Ennix in spite of Dr. Lee's report: as the only  
12 cardiac surgeons on the SPRC, their opinions would have carried significant weight with the  
13 SPRC.

14 22. On April 16, 2004, Dr. Steven Stanten and Dr. Isenberg informed Dr. Ennix of the  
15 SPRC's conclusions regarding the four minimally invasive procedures and other generalized  
16 concerns. Steven Stanten and Isenberg also informed Dr. Ennix that the moratorium on  
17 performing minimally invasive procedures had been lifted, allowing other surgeons, such as  
18 Steven Stanten's brother, Russell Stanten, to perform minimally invasive cardiac surgery  
19 procedures. However, Steven Stanten and Isenberg recommended that Dr. Ennix continue to  
20 refrain from performing the minimally invasive cardiac surgery procedures until the issues raised  
21 by the SPRC could be resolved by an ad hoc committee. Thereafter, despite the fact that Dr.  
22 Ennix had voluntarily suspended performing minimally invasive procedures before the SPRC  
23 decided to investigate his performance, Isenberg submitted a report to the Medical Board of  
24 California and the National Practitioner Data Bank stating that Dr. Ennix had suspended use of  
25 the procedure while under investigation.

26 23. Several months later, Isenberg and the MEC established an Ad Hoc Committee  
27 ("AHC") to review the four minimally invasive procedures and the other generalized concerns  
28 discussed in the April 10, 2004 SPRC meeting. Although there were ten cardiac surgeons and



1 more than forty cardiologists on the medical staff, the AHC did not include any cardiac surgeons  
2 or cardiologists. Defendant Isenberg, President of the Medical Staff, appointed Lamont Paxton  
3 to be Chairman of the AHC. Paxton was a member of the SPRC who had presumably attended  
4 the April 10, 2004 meeting and knew of comments regarding Dr. Ennix by Steven Stanten and  
5 Dr. Ennix's business partners Russell Stanten and Iverson.

6 24. After many months of delay, and without affording Dr. Ennix the opportunity to  
7 appear before the AHC despite his requests, on January 4, 2005, the AHC requested that a  
8 private, outside peer review organization called National Medical Audit ("NMA") review not  
9 only the four minimally invasive cases, but also an additional six cases that had previously  
10 undergone peer review by the Summit Cardiac Surgery Peer Review Committee and had been  
11 found to present no patient care issues. Dr. Ennix objected to the referral to NMA, which  
12 appeared to be a sham outfit, comprised of a nephrologist who had not practiced medicine in  
13 many years, a surgeon with a very poor performance record, and a surgeon who had never  
14 practiced in California. On May 3, 2005, the NMA returned an unsigned report harshly  
15 criticizing Dr. Ennix's performance on all ten of the reviewed cases. The NMA report was at  
16 odds with the Summit Cardiac Surgery Peer Review, Dr. Lee's report, subsequent reviews of the  
17 cases by several nationally renowned cardiac surgeons and, ultimately, the review by the  
18 Medical Board of the State of California.

19 25. On May 4, 2005, Dr. Ennix performed an operation in which he replaced two  
20 valves in a young male patient ("double valve patient"). The surgery went very well. The next  
21 day, Dr. Ennix performed surgery on two very ill patients. That day, Dr. Ennix made rounds on  
22 the double valve patient twice—once in the morning and once in the afternoon—as is  
23 documented in the nurses' notes. Dr. Ennix did not himself note his rounds on the double valve  
24 patient because he was busy with the two surgeries scheduled that day. The next day, May 6,  
25 2005, Dr. Ennix made rounds on the double valve patient again, noted those rounds, and then  
26 noted his previous rounds on that patient which he had been unable to record the day before.

27 26. On May 11, 2005, Defendant Isenberg, President of the Medical Staff, summarily  
28 suspended Dr. Ennix alleging that he had placed the double valve patient in danger by not

1 making rounds on the patient on May 5<sup>th</sup>. Isenberg accused Dr. Ennix of not only failing to see  
2 the double valve patient, but also of falsifying the record claiming that he had seen the patient.  
3 Dr. Ennix produced a letter from the on-duty nurse as well as nurses' notes verifying that he had  
4 seen the patient more than once on May 5<sup>th</sup>. Despite this, the MEC upheld the suspension on  
5 May 18, 2005 pending the outcome of the AHC process.

6 27. Faced with a complete loss of his ability to practice, Dr. Ennix asked Dr. Isenberg  
7 to at least allow him to continue surgical assisting. The MEC accepted Dr. Ennix's proposal.

8 28. Dr. Ennix requested a hearing pursuant to Article VIII, Section 8.36 of the  
9 Medical Staff Bylaws to review Isenberg's summary suspension and the MEC's subsequent  
10 upholding of that suspension. However, Isenberg and Alta Bates Summit insisted that no hearing  
11 rights attached to these actions because Dr. Ennix "expressly stipulated" to surgical assisting in  
12 lieu of suspension.

13 29. Despite the fact that the medical staff includes several other cardiac surgeons,  
14 plaintiff is informed and believes that the AHC solicited the help of Dr. Ennix's partners Russell  
15 Stanten and Iverson—both of whom had participated in the initial SPRC meetings regarding Dr.  
16 Ennix initiated by Steven Stanten, the brother of Russell Stanten—to help determine the validity  
17 of the NMA report. Russell Stanten concluded that the report was very thorough and valid. The  
18 AHC delivered a harsh review of Dr. Ennix that recommended reinstating Dr. Ennix's surgical  
19 privileges subject to the requirement that he have a proctor present. On September 7, 2005, the  
20 MEC upheld the AHC's report and recommendation.

21 30. Approximately forty-five days later, Alta Bates Summit gave Dr. Ennix two  
22 choices: either appeal the MEC's decision and remain suspended indefinitely or accept a  
23 condition that he have a proctor present at all his surgeries. In order to begin rebuilding his  
24 surgical practice as quickly as possible, Dr. Ennix was forced to opt for the latter course. On  
25 October 25, 2005, Dr. Ennix voluntarily separated from his business partners, secured six staff  
26 cardiac surgeons from the Kaiser Permanente Medical Group to serve as proctors, and began a  
27 solo cardiac surgery practice which he retains today.  
28

1           31. On December 30, 2005, in the final days of Isenberg's tenure as President of the  
2 Medical Staff, Dr. Isenberg, an obstetrician and gynecologist, again summarily suspended Dr.  
3 Ennix' privileges without justification. Further, Isenberg imposed the summary suspension  
4 without first consulting the proctors who had been observing Dr. Ennix' surgeries. After  
5 consulting officers of the MEC, Dr. Isenberg reinstated Dr. Ennix' proctor-restricted privileges  
6 on January 6, 2006.

7           32. On April 19, 2006, the proctors reported on the twenty-nine surgical cases they  
8 had proctored, stating that "[i]t was the unanimous opinion that Dr. Ennix met" or exceeded  
9 expectations in pre-operative and post-operative phases, and met the standard of care in the peri-  
10 operative phases. The proctors went on to state "[i]t is with unanimous decision from the group  
11 of proctors, that we recommend the proctorship be terminated and that Dr. Ennix be reinstated to  
12 the medical staff with full unrestricted privileges."

13           33. Despite the proctors' evaluation and recommendation, the MEC voted to continue  
14 the proctorship requirement, stating that 29 cases was an insufficient number. The MEC finally  
15 voted to remove the proctoring requirement on July 11, 2006.

16           34. Dr. Ennix endured fourteen months of restricted privileges, costing him and his  
17 family hundreds of thousands of dollars in lost profits, emotional distress and damage to his  
18 reputation. Until only recently, Dr. Ennix' cases were subject to ongoing review by the Chief of  
19 Cardiac Surgery, Dr. Russell Stanten, upon the recommendation of the AHC. Plaintiff is  
20 informed and believes that each Defendant, and especially Plaintiff's former partners and fellow  
21 cardiac surgeons Russell Stanten and Leigh Iverson, knew that the four minimally invasive cases  
22 were not below the standard of care, particularly in light of Dr. Hon Lee's report confirming this.  
23 Plaintiff is further informed and believes that Steven Stanten, Russell Stanten, Isenberg and  
24 Iverson knew that the other cases reviewed by the AHC were within the standard of care, as the  
25 Summit Cardiac Surgery Peer Review Committee had concluded. Plaintiff is further informed  
26 and believes that Isenberg and the MEC acted with racially-based malice and in reckless  
27 disregard of the facts in suspending Plaintiff's privileges, and subjected Dr. Ennix to far harsher  
28 treatment than similarly situated white physicians.

1           35. Individual Defendants provided information to the SPRC, AHC, NMA and MEC  
2 that they knew to be false. Defendants' professional review actions—including the SPRC's  
3 decision to review Dr. Ennix's performance notwithstanding that Dr. Lee and the Summit  
4 Cardiac Surgery Peer Review Committee had previously determined there had been no breach in  
5 the standard of care; Dr. Isenberg's report to the Medical Board of California and the National  
6 Practitioner Data Bank that Dr. Ennix suspended use of minimally invasive procedures while  
7 under investigation; the MEC's and SPRC's assignment of the review to the AHC which  
8 included no cardiac surgeons or cardiologists, thus ensuring that the AHC would have no means  
9 to critically assess the facts; the SPRC's failure to allow Dr. Ennix to address it regarding the  
10 issues; the AHC's referral of the matter to the sham peer review outfit NMA; the suspension of  
11 Dr. Ennix's privileges based on demonstrably false allegations that he neglected a patient; Dr.  
12 Isenberg's second unwarranted summary suspension of Dr. Ennix's privileges; the AHC's heavy  
13 reliance on the false, malicious and self-serving representations of Dr. Ennix's partners Russell  
14 Stanten and Iverson in their evaluation of the NMA report and Dr. Ennix's performance; the  
15 AHC's factually groundless report and recommendation; the MEC's decision on that  
16 recommendation to require Dr. Ennix to practice only with a proctor present; and finally the  
17 MEC's decision to continue the proctorship requirement despite the unanimous opinion of all six  
18 proctors that the requirement should be immediately lifted (collectively "Professional Review  
19 Actions")—were not taken in the reasonable belief that they furthered quality health care. Nor  
20 were these actions taken after a reasonable effort to obtain the facts, or in the reasonable belief  
21 that the actions were warranted by the facts. Rather, Defendants took the Professional Review  
22 Actions against Dr. Ennix with the malicious and racially-motivated intent to destroy Dr. Ennix's  
23 career and eliminate one of the most successful cardiac surgeons practicing at Alta Bates  
24 Summit.

25           36. Plaintiff exhausted all administrative remedies available to him.  
26  
27  
28

**FIRST CAUSE OF ACTION**

Race Discrimination in violation of 42 U.S.C. § 1981  
(Against Alta Bates Summit and Does 1-100)

37. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

38. Alta Bates Summit's conduct as alleged in this complaint violates 42 U.S.C. § 1981, which guarantees that all citizens shall have the same rights under the law as are enjoyed by white citizens.

39. Dr. Ennix is African American.

40. In taking the Professional Review Actions, Alta Bates Summit intended to discriminate against Dr. Ennix on the basis of Dr. Ennix's race and treated Dr. Ennix differently than similarly situated white physicians.

41. Such actions and discrimination concerned Dr. Ennix's abilities to perform his contractual duties with Alta Bates Summit and his patients and Dr. Ennix's abilities to enjoy the benefits, privileges, terms, and conditions of those contractual relationships.

42. Dr. Ennix suffered damages proximately caused by Alta Bates Summit's conduct.

**SECOND CAUSE OF ACTION**

Race Discrimination in violation of Unruh Civil Rights Act  
(Against Alta Bates Summit and Does 1-100)

43. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

44. The Professional Review Actions violate California Civil Code § 51, *et seq.*, which prohibits any business establishment from discriminating against any person on account of race.

45. In taking the Professional Review Actions, Defendants intended to discriminate against Dr. Ennix on the basis of Dr. Ennix's race and treated him differently than they treat similarly situated white physicians.

46. As alleged herein, Defendants specifically discriminated against Dr. Ennix because of Dr. Ennix's race in taking the Professional Review Actions. Defendants denied Dr. Ennix full and equal advantages and privileges because of Dr. Ennix's race.

1 47. Dr. Ennix suffered damages proximately caused by Defendants' conduct.

2 **THIRD CAUSE OF ACTION**

3 Violation of Cartwright Act

4 (Against Iverson, Russell Stanten, Steven Stanten, William Isenberg and Does 1-100)

5 48. Plaintiff incorporates by reference all paragraphs set forth above as though fully  
6 set forth herein.

7 49. Iverson, Russell Stanten, Steven Stanten and Isenberg formed and operated a  
8 conspiracy or combination to provide false information and false opinions regarding Dr. Ennix's  
9 professional competence, judgment and skill, to initiate a sham peer review process against Dr.  
10 Ennix, and to impose unwarranted and professionally and financially devastating restrictions on  
11 his surgical privileges.

12 50. The purpose of the conspiracy was to restrain trade by eliminating Dr. Ennix from  
13 the pool of lead cardiac surgeons available in his region.

14 51. Dr. Ennix suffered damages proximately caused by Defendants' conspiratorial  
15 conduct.

16 **FOURTH CAUSE OF ACTION**

17 Interference with Right to Practice Profession

18 (Against All Defendants)

19 52. Plaintiff incorporates by reference all paragraphs set forth above as though fully  
20 set forth herein.

21 53. Defendants' conduct as alleged in this complaint violates the common law  
22 doctrine that prohibits intentional interference with one's right to practice a profession by means  
23 that are either unlawful or that are otherwise lawful, but unprivileged or without sufficient  
24 justification.

25 54. By taking the Professional Review Actions which were factually unwarranted, not  
26 in furtherance of quality health care and motivated by race-based discrimination, Defendants  
27 have unlawfully interfered with Dr. Ennix's right to practice his profession without privilege or  
28 sufficient justification.

55. Dr. Ennix suffered damages proximately caused by Defendants' conduct.

**FIFTH CAUSE OF ACTION**

Business & Professions Code Section 17200, *et seq.*  
(Against All Defendants)

56. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

57. The Professional Review Actions violate Business and Professions Code §§ 17200 *et seq.*, which prohibit unlawful, unfair, and/or fraudulent business acts or practices.

58. As alleged herein, Defendants' Professional Review Actions were unlawful, in that the Actions discriminated against Dr. Ennix based on his race, and lacked factual justification. As such, Defendants' actions constitute an unlawful, unfair, and/or fraudulent business act or practice within the meaning of Business and Professions Code §§ 17200 *et seq.*

59. Dr. Ennix lost profits and suffered injury in fact as a result of Defendants' actions.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against the defendants, and each of them, as follows:

1. For an award of compensatory, restitution, disgorgement and other special and general damages according to proof;
2. For an award of punitive damages;
3. For an award of interest, including prejudgment interest, at the legal rate;
4. For an award of costs of suit incurred herein on all causes of action;
5. For an award of attorneys' fees;
6. For an injunction pursuant to California Business & Professions Code Section 17203 requiring Alta Bates Summit to take immediate action to prevent future racial-based discrimination against Plaintiff and any Alta Bates Summit employees;
7. For such other and further relief as this court deems just and proper.

**JURY DEMAND**

Plaintiff requests this matter be tried before a jury.

Dated: May 8, 2007

Respectfully Submitted,

MOSCONE, EMBLIDGE & QUADRA, LLP

By: 

G. Scott Emblidge

Rachel J. Sater

Andrew E. Sweet

Attorneys for Coyness L. Ennix Jr., M.D.

**CERTIFICATE OF INTERESTED ENTITLED OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: May 8, 2007

By: 

G. Scott Emblidge

Attorneys for Coyness L. Ennix Jr., M.D.



United States District Court  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

COYNESS L. ENNIX JR., M.D., as an individual and in his representative capacity under Business & Professions Code § 17200 et seq.,

SUMMONS IN A CIVIL CASE

CASE NUMBER:

C 07 - 2486

V.

RUSSELL D. STANTEN, M.D., LEIGH I.G. IVERSON, M.D., STEVEN A. STANTEN, M.D., WILLIAM M. ISENBERG, M.D., Ph.D., ALTA BATES SUMMIT MEDICAL CENTER and does 1 through 100,

TO: (Name and address of defendant)

William M. Isenberg, M.D.  
365 Hawthorne Avenue, #301  
Oakland, CA 94609-3115

JCS

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

G. Scott Emblidge  
Moscone, Emblidge & Quadra, LLP  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94104

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wieking

CLERK

DATE 5/09/07

(BY) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action.

**RETURN OF SERVICE**Service of the Summons and Complaint was made by me <sup>1</sup>

DATE

Name of SERVER

TITLE

*Check one box below to indicate appropriate method of service*☐

Served Personally upon the Defendant. Place where served:

☐

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

☐

Returned unexecuted:

☐

Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL

SERVICES

TOTAL

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure